From:	LERS, EOIR (EOIR)
To:	All of CLAD (EOIR); All of Judges (EOIR); All of OCIJ JLC (EOIR); Allen, Patricia M. (EOIR); Anderson, Jill (EOIR); Baptista, Christina (EOIR); Bauder, Melissa (EOIR); Berkeley, Nathan (EOIR); BIA ATTORNEYS (EOIR); BIA BOARD MEMBERS (EOIR); BIA TEAM JLC; BIA TEAM P (EOIR); Brazill, Caitlin (EOIR); Burgie, Brea (EOIR); Burgus, Elizabeth (EOIR); Calvert, Irvina (EOIR); Cardenas, Lupe (EOIR); Carr, Donna (EOIR); Cicchini, Daniel (EOIR); Cowles, Jon (EOIR); Crossley, Maurice (EOIR); Cudo, Relanie (EOIR); Curry, Michelle (EOIR); D"Angelo, Matthew (EOIR); Evans, Brianna (EOIR); Gonzalez, Robert (EOIR); Grodin, Edward (EOIR); Hammond, Nicole (EOIR); Hartman, Alexander (EOIR); Hess, Chris (EOIR); Kaplan, Matthew (EOIR); King, Jean (EOIR); Korniluk, Artur (EOIR); Lang, Steven (EOIR); LERS, EOIR (EOIR); Lovejoy, Erin (EOIR); Martinez, Casey L. (EOIR); Mitchell, Carla (EOIR); Morteo, Cristina (EOIR); Noferi, Mark (EOIR); O"Hara, Shelley M. (EOIR); Park, Jeannie (EOIR); Podgorski, Monika (EOIR); Powell, Karen B. (EOIR); Ramirez, Sergio (EOIR); Rimmer, Phillip (EOIR); Robbins, Laura (EOIR); Rodrigues, Paul A. (EOIR); Rodriguez, Bernardo (EOIR); Rothwarf, Marta (EOIR); Sanders, John W. (EOIR); Santoro, Christopher A (EOIR); Schaaf, Joseph R. (EOIR); Smith, Terry (EOIR); Stutman, Robin M. (EOIR); Swanwick, Daniel (EOIR); Taufa, Elizabeth (EOIR); Vayo, Elizabeth (EOIR)
Cc:	McHenry, James (EOIR); Reilly, Katherine (EOIR); Sheehey, Kate (EOIR); Alder Reid, Lauren (EOIR); Moutinho, Deborah (EOIR); Adams, Amanda (EOIR); Pease, Jeffrey (EOIR); Morgan, Kenosha (EOIR); EOIR Library (EOIR); Macri, Andrea (EOIR)
Subject:	Policy & Case Law Bulletin - September 21, 2018
Date:	Friday, September 21, 2018 3:59:47 PM

EXECUTIVE OFFICE FOR
IMMIGRATION REVIEW
Office of Policy | Legal Education and Research Services Division

Policy & Case Law Bulletin
September 21, 2018

Federal Agencies

DOJ

- Attorney General Directs the Board to Refer its Decision in Matter of M-G-G- to Him for Review — EOIR

  27 I&N Dec. 469 (A.G. 2018)

  The Attorney General will review issues relating to "the authority to hold bond hearings for certain aliens screened for expedited removal proceedings." The Board's decision is stayed pending the Attorney General's review of the matter. The Attorney General invited the parties and interested amici to submit briefs on relevant points including: "Whether Matter of X-K-, 23 I&N Dec. 731 (BIA 2005), which held that immigration judges may hold bond hearings for certain aliens screened from expedited removal proceedings under section 235(b)(1) of the Immigration and Nationality Act, 8 U.S.C. § 1225(b)(1), into removal proceedings under section 240, 8 U.S.C. § 1229a, should be overruled in light of Jennings v. Rodriguez, 138 S. Ct. 830 (2018)." He directed the parties to submit any briefs on or before October 9, 2018, and any reply briefs on or before October 16, 2018. He invited interested amici to submit briefs on or before October 16, 2018.

- Attorney General Issues Decision in Matter of S-O-G- & F-D-B- — EOIR

  27 I&N Dec. 462 (A.G. 2018)

  (1) Consistent with Matter of Castro-Tum, 27 I&N Dec. 271 (A.G. 2018), immigration judges have no inherent authority to terminate or dismiss removal proceedings. (2) Immigration judges may dismiss or terminate removal proceedings only under the circumstances expressly identified in the regulations, see 8 C.F.R. § 1239.2(c), (f), or where the Department of Homeland Security fails to sustain the charges of removability against a respondent, see 8 C.F.R. § 1240.12(c). (3) An immigration judge's general authority to "take any other action consistent with applicable law and regulations as may be appropriate," 8 C.F.R. § 1240.1(a)(1)(iv), does not provide any additional authority to terminate or dismiss removal proceedings beyond those authorities expressly set out in

the relevant regulations. (4) To avoid confusion, immigration judges and the Board should recognize and maintain the distinction between a dismissal under 8 C.F.R. § 1239.2(c) and a termination under 8 C.F.R. § 1239.2(f).

- Virtual Law Library Weekly Update — EOIR

  This update includes resources recently added to EOIR's internal or external Virtual Law Library, such as Federal Register Notices, country conditions information, and links to recently-updated immigration law publications.

DHS

- USCIS Publishes Revised Form G-28 and Extends Grace Period for Prior Version

  USCIS has published a revised version of Form G-28, Notice of Entry of Appearance as Attorney or Accredited Representative, with a 09/17/18 edition date. USCIS also extended the grace period for the 05/05/16 and 03/04/15 versions.

- USCIS Now Accepting Copies of Negative O Visa Consultations Directly from Labor Unions

  "Effective immediately, USCIS will begin accepting copies of negative consultation letters directly from labor unions relating to a current or future O nonimmigrant visa petition request. . . . [USCIS] recently met with several labor unions to discuss concerns they had with the consultation process for O visa petitions, in particular that some advisory opinions may be falsified by petitioners and submitted to USCIS as no-objections or favorable consultations, when in fact these were negative. The labor unions will now be able to send a copy of a negative consultation letter to USCIS so that it can be compared to the consultation letter submitted to USCIS by the petitioner."

DOS

- DOS Posts October Visa Bulletin

  The Visa Bulletin includes a summary of available immigrant numbers, visa availability, and scheduled expiration of visa categories.

- DOS Updates 9 FAM

  DOS made updates to 9 FAM, including to section 305.3, editing 9 FAM 305.3-2(B) regarding required vaccinations, and section 305.2, editing section 9 FAM 305.2-9(F) regarding smugglers.

Third Circuit

- United States v. Price

  No. 1:18-CR-54, 2018 WL 4469791 (M.D. Pa. Sept. 18, 2018) (unpublished) (Crime of Violence; ACCA)

  The district court granted Price's motion to dismiss the enhanced penalty pursuant to the ACCA based on his prior convictions under Ga. Code. Ann. § 16-7-1(a) (burglary) and Ohio Rev. Code § 2903.11(A) (felonious assault). The court determined that Price's prior conviction for burglary in Georgia does not constitute an enumerated violent felony (i.e., generic burglary) under 18 U.S.C. § 924(e)(2)(B)(ii) ("ACCA enumerated clause"). Additionally, because the Ohio statute effects a more expansive understanding of "physical harm" than the ACCA by including certain mental and emotional harms, the court determined that Price's Ohio felonious assault conviction does not constitute a violent felony under 18 U.S.C. § 924(e)(2)(B)(i) ("ACCA force clause"), analogous to 18 U.S.C. § 16(a).

Fifth Circuit

- Rodriguez-Saragosa v. Sessions

  No. 16-60515, 2018 WL 4374892 (5th Cir. Sept. 14, 2018) (Motion to Reopen)

  The Fifth Circuit denied the PFR, holding that the Board correctly denied Rodriguez-Saragosa's motion to reopen. Rodriguez-Saragosa was denied cancellation of removal in 2002 for reasons that have since become "legally infirm," and was removed shortly thereafter. He reentered the country illegally in 2003 and later moved to reopen his original removal proceedings to reapply for cancellation of removal. The court determined that the Board did not have the authority to reopen Rodriguez-Saragosa's proceedings based on section 241(a)(5) of the Act, which provides that if "an alien has reentered the United States illegally after having been removed," the prior order of removal "is not subject to being reopened." Persuaded by Cordova-Soto v. Holder, 732 F.3d 789, 795 (7th. 2013), the court concluded that "[s]ection [241(a)(5)] would have posed no bar to Rodriguez-Saragosa's motion to reopen had he filed that motion without reentering illegally."

- Zu v. Sessions

  No. 16-60651, 2018 WL 4360930 (5th Cir. Sept. 12, 2018) (unpublished) (Waiver of Claims; Attorney Conduct)

  The Fifth Circuit denied the PFR, concluding that Zu effectively waived any claims on appeal because his counsel failed to file a brief meaningfully challenging the Board's decision. The court issued a warning to counsel that future frivolous filings may invite the imposition of sanctions.

Sixth Circuit

- Al-Saka v. Sessions

  No. 17-3951, 2018 WL 4443234 (6th Cir. Sept. 18, 2018) (Joint-Petition Waiver; Ineffective Assistance)

  The Sixth Circuit dismissed the PFR, affirming the Board's decision to reject the joint-petition waiver and to find Al-Saka deportable because he did not enter into the marriage in good faith. The court declined to reach the statutory question of whether the Attorney General has the discretion to waive removal under section 237(a)(1)(H) of the Act for those who commit marriage fraud because, even assuming the waiver applied, the IJ and Board had already denied Al-Saka's request as a matter of discretion. Finally, the court upheld the Board's determination that Al-Saka failed to demonstrate ineffective assistance of counsel under Matter of Lozada, 19 I&N Dec. 637 (BIA 1988). In its discussion, the court analyzed the administrative remedy for ineffective assistance claims as providing greater protections than the Fifth Amendment requires.

Eighth Circuit

- Martin v. United States

  No. 17-2232, 2018 WL 4368671 (8th Cir. Sept. 14, 2018) (Crime of Violence; ACCA)

  The 8th Circuit affirmed the order of the district court, finding controlling its recent holding in United States v. Myers, 896 F.3d 866 (8th Cir. 2018), that Ark. Code Ann. § 5-13-301(a)(1)(A) (first-degree terroristic threatening) is divisible. Applying the modified categorical approach, the court determined that the state court documents establish Martin's two prior convictions involved threatening to use physical force against another person. Thus, both convictions constitute violent felonies under 18 U.S.C. § 924(e)(2)(B)(i) ("ACCA force clause"), analogous to 18 U.S.C. § 16(a).

Ninth Circuit

- Sanchez v. Sessions

  No. 14-71768, 2018 WL 4495220 (9th Cir. Sept. 19, 2018) (Regulatory Violation; Exclusion of Evidence; Termination)

  The Ninth Circuit granted the PFR, concluding that Sanchez made a prima facie showing that the Coast Guard officers, who were acting as "immigration officers," egregiously violated 8 C.F.R. § 287.8(b)(2) when they detained him solely on the basis of his Latino appearance without reasonable suspicion that Sanchez was engaged in an offense against the United States or unlawfully present in the country. The court criticized the actions of the officers, warning that "[w]hen the Government ignores this country's commitment to equality and fairness by engaging in racial and ethnic profiling, it betrays all of its people." Joining the Second Circuit, the court held that individuals may be entitled to termination of their removal proceedings without prejudice for egregious regulatory violations. However, the court determined that a remand was required to allow the Government an opportunity to introduce evidence rebutting Sanchez's prima facie showing before considering whether termination without prejudice is appropriate.

- Bartolome v. Sessions

  No. 15-71666, 2018 WL 4371028 (9th Cir. Sept. 14, 2018) (Reasonable Fear Hearings; Jurisdiction)

  The Ninth Circuit granted the PFR in part and denied it in part. Acknowledging that reasonable fear review hearings are not intended to be full evidentiary hearings, the court determined that the IJ did not violate Bartolome's due process rights by failing to specifically address all of the evidence and claims before him. However, relying on its decision in Ayala v. Sessions, 855 F.3d 1012 (9th Cir. 2017), the court held that the IJ abused his discretion when he rejected Bartolome's motion to reopen for lack of jurisdiction. The court concluded that 8 C.F.R. § 1003.23(b)(1) grants an IJ sua sponte authority to reopen any matter in which he or she has made a decision, including reasonable fear review hearings.